

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.674 OF 1992

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

JASHUBHAI GORDHANDAS PATEL
VERSUS
BIPINCHANDRA BHOGILAL PATEL & ORS.

Appearance:

MR ASHIN DESAI for Petitioner
None present for Respondent

Coram: S.K. Keshote,J
Date of decision:15/02/1999

C.A.V. JUDGMENT

#. The plaintiff-petitioner is one of the trustees of Trust known as Smt.Hansaben Bipinchandra Trust. He filed a suit for removal of a trustee - respondent No.1 and for injunction restraining him from acting as a trustee and/or representing interest of the said trust with some ancillary reliefs of accounts, etc. on the ground of allege mismanagement by the said trustee of the trust. So the suit was in substance against respondent No.1. The respondent No.4 one of the beneficiaries of the trust vide Chamber Summons had prayed that the property bearing M.C. No.569/A-1-2 admeasuring about 245 sq.yds. situated in Gomtipur in the city of Ahmedabad occupied by the tenants who on account of mismanagement and some disputed interests between the trustees, are not giving true and correct information about the rent paid and due, and therefore, the commissioner is required to be appointed to collect information about the rent paid and due, to collect rent and to submit the report in Court at fixed intervals. Under the impugned order, the Judges Summons aforesaid has been granted and the respondent No.1 was appointed as Commissioner for the limited purpose as prayed in para 12(A) of the Judges Summons. He was authorized to obtain true and correct particulars about rent paid as well as due from each of the tenants, to collect rent and pass appropriate receipts for and on behalf of the trust. The Commissioner is directed to submit his report in Court at the interval of every quarter, commencing from 1st April, 1992. Accordingly, the Commissioner to submit his first report on or before 10th July 1992, for the quarter ending 30th June 1992, thereafter on or before 10th day of every succeeding month from the end of the quarters ending on 30th September 1992, 31st December, 1992, 31st March 1993, and so on. The Commissioner is also directed to keep separate account in this regard. This order is challenged by the plaintiff-petitioner by this Civil Revision Application .

#. Initially against this order Appeal From Order No.278 of 1992 has been filed but later on it was converted in this Civil Revision Application.

#. In Civil Application No.2118 of 1992 in Appeal From Order No.278 of 1992, this Court, on 14th May 1992 was pleased to pass the following order:

"Rule. Notice as to interim relief returnable on 29th May, 1992.

Interim relief in terms of para 6(A) to be operative till 2nd June, 1992. Direct Service

permitted".

Dt.: 14.5.1992

A copy of this order has been given by the learned counsel for the petitioner.

#. On being inquired by the Court from the Shirestedar, it has been informed that the papers of Civil Application No.2118 of 1992 are not there in the High Court Bundle. Not only this, the papers of this civil application are also not attached with this Civil Revision Application. So it is very difficult to know what ultimately happened to the order of interim relief which has been granted by this Court on 14th May 1992 in the Civil Application. On 9th June 1992 this Civil Revision Application has been placed for admission and this Court has ordered:

Rule, returnable on 16.6.92. Mr.K.N.Patel,
advocate waives service of Rule of respondent
No.1. Mr.P.J.Bhatt waives service of Rule of
respondent No.4.

So far as interim relief is concerned, this Court has not passed any order on that date. The plaintiff-petitioner filed Civil Application No.2648 of 1992 on which on 5.8.92 this Court has issued notice to the respondents returnable on 12th August 1992. On 20th December 1993, this Court ordered, "in view of the earlier order passed in the main C.R.A., the present Civil Application does not survive. The same is disposed of with no order as to costs".

#. The learned counsel for the petitioner contended that the interim relief which has been granted by this Court in Civil Application No.2218 of 1992 continues till this date. I had an occasion to deal with the procedure which is being followed in this Court regarding M.C.A., C.A. etc. I have observed that the system of filing civil applications and misc. civil applications separately and registering separately causes manifold difficulties as well as providing wide scope of commission of frauds by unscrupulous persons. I have given suggestion that instead of filing of separate civil application, these applications should have been presented in the form of application in the main matter itself, i.e. it has to be given the number of the main matter. Deciding of civil applications separately also causes manifold confusion and possibility of commission of fraud. In the present case, interim relief has been granted in civil application which civil application is not traceable. It

is difficult to say ultimately what final order has been passed on that civil application. In case all applications are being filed in the main matter and the order passed thereon are transcribed in the main matter itself, the Court may have glance on all the orders passed during the course of proceedings of the matter. In such system there may not be any confusion or possibility of commission of any fraud. Such applications may also remain tagged with the main file so that the Court may be in a position to take out any application which it needs to consider. In the present case, in the absence of the civil application, it is very difficult to say affirmatively in relation to grant of interim relief granted therein. The learned counsel for the petitioner also is unable to say whether the Regular Civil Suit No.6994 of 1991 is still pending in the Court or has been decided finally.

#. Be that as it may, there are two possibilities. Either the interim relief granted by this Court has been vacated or it continues. Though after conversion of Appeal From Order in Civil Revision Application, the order of admission has been made by this Court, but so far as interim relief is concerned, it has not either way passed any order, i.e. for grant of interim relief or for confirmation of interim relief which has been granted on Civil Application No.2118 of 1992 or for vacation thereof. The learned counsel for the petitioner contended that that order still continues till this date and unless contrary has been produced on the record that statement has to be accepted. When this order of the learned trial Court has been stayed by this Court and that stay continues for all these years, interest of justice will be met in case this civil revision application is disposed of in terms that the interim relief granted by this Court in civil application No.2118 of 1992 shall continue till decision of Regular Civil Suit No.6994 of 1991. The learned trial Court is directed to decide the Regular Civil Suit No.6994 of 1991 within a period of nine months from the date of receipt of writ of this order. The Civil Revision Application stands disposed of accordingly with no order as to costs.

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[sunil]